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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH NO. MH 7496-4-08	2 CA-MH 2008-0002 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Kyle Bryson, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Rutheanne Miller — Tucson
Attorneys for Appellee

Ann L. Bowerman — Tucson
Attorney for Appellant

H O W A R D, Presiding Judge.

¶1 After a hearing, the trial court found by clear and convincing evidence that appellant is persistently or acutely disabled as the result of a mental disorder, is in need of treatment, and is either unable or unwilling to accept or continue treatment voluntarily. Finding the requirements of A.R.S. § 36-540(A) thus satisfied, the court ordered that appellant receive mental health treatment for one year, including the possibility of up to 180 days of inpatient treatment "in a level one facility."

¶2 Appellant is a sixty-year-old female with a lengthy history of mental illness. The trial court record contains petitions and orders for involuntary mental health evaluation and treatment dating back to 1998. It also contains multiple reports of screenings and psychiatric evaluations documenting appellant's long-standing delusional disorder and previous episodes of psychosis.

¶3 Most recently, in January 2008, her adult daughter, Lisa R., submitted an application for appellant's evaluation. After two psychiatrists employed by University Physicians Healthcare found appellant to be psychotic, one of the two filed the petition for court-ordered treatment that led to the hearing and eventual order from which appellant has appealed.

¶4 In the sole issue raised on appeal, appellant contends the trial court erred in denying her motion to strike the testimony of one of the two lay witnesses who testified at the commitment hearing because, she claims, the requirements of A.R.S. § 36-539(B) were not satisfied. Section 36-539(B) governs the conduct of commitment hearings and provides in pertinent part: "The evidence presented by the petitioner or the patient shall include the testimony of two or more witnesses *acquainted with the patient at the time of the alleged mental disorder* and testimony of the two physicians who performed examinations in the evaluation of the patient." (Emphasis added.)

¶5 Four witnesses testified for the petitioner at the commitment hearing—the two evaluating psychiatrists and two lay witnesses, Fernando F. and Lisa R. At the conclusion of the state's evidence, appellant's counsel moved the court to strike the testimony of Lisa R. on the ground that Lisa had not seen appellant in over a year and therefore was not

currently "acquainted" with appellant. The court denied the motion after hearing argument from both counsel.

¶6 Without mentioning their mother-daughter relationship, appellant reiterates on appeal her argument that Lisa "had no current knowledge or familiarity with [appellant] and was not acquainted with [appellant] at the time of her filing of the application for evaluation or at the time of her testimony to the court," based on Lisa's statement that she had not seen her mother in "over a year." Appellant omits to mention Lisa's further testimony that the reason she had asked the sheriff's department to conduct a welfare check on appellant in December 2007 and then had applied for her mother's psychiatric evaluation in January 2008 was that appellant had in recent weeks telephoned Lisa repeatedly, making in a succession of upsetting calls what the state characterizes in its answering brief as "grotesque allegations and fantastical claims."

¶7 The narrow legal issue presented, therefore, is whether for purposes of § 36-539(B) a lay witness can be "acquainted with the patient at the time of the alleged mental disorder" without having physically seen the patient in over a year. The dictionary definition of "acquainted" is "being known to . . . ," "having personal knowledge of," or "being somewhat familiar with" a person or thing or idea. *Webster's Third New International Dictionary* 18 (1971). Neither the definition of "acquainted" nor the statute itself limits how one may acquire personal knowledge or become familiar with the patient, nor does either contain any temporal requirement for the recency of the personal contact between the witness and the patient as long as the witness is "acquainted with the patient at the time of the alleged mental disorder." § 36-539(B).

¶8 It is well settled that, "[b]ecause involuntary treatment proceedings may result in a serious deprivation of appellant's liberty interests," *In re Maricopa County Mental Health No. MH 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002), *citing In re Coconino County Mental Health No. MH 1425*, 181 Ariz. 290, 293, 889 P.2d 1088, 1091 (1995), the applicable commitment statutes must be carefully followed. *See In re Maricopa County Mental Health No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004); *In re Pima County Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 567, 863 P.2d 284, 286 (App. 1993). "Proceedings to adjudicate a person mentally incompetent must be conducted in strict compliance with the statutory requirements." *In re Maxwell*, 146 Ariz. 27, 30, 703 P.2d 574, 577 (App. 1985). But we will not read into those statutes additional requirements not placed there by the legislature.

¶9 On the facts of this case, to say that Lisa was not "acquainted with" her own mother "at the time of the alleged mental disorder" would be wholly implausible, particularly in light of appellant's recent, disturbing telephone calls to her daughter. As Lisa testified:

> She's been, over the course of the last ten years, has been saying some really weird things. . . . She's been talking about how the doctors have been treating her, going on about these delusions about these children that she says that she's had. We've gone through times where everything has been fine and then all of a sudden she goes on about, you know, these delusions about these children and this money that she has, that she says that she has. Just all this, I mean, she's getting worse and worse and worse. . . . I've tried not to get involved with doing anything, but it would get to the point where she would just call . . . and just keep calling and just keep calling and to the point where I'm just a basket case.

By denying appellant's motion to strike Lisa's testimony, the trial court implicitly found Lisa was indeed currently "acquainted with" her mother. The record, as well as common sense and logic, support that finding and thus support the court's denial of appellant's motion to strike the testimony. We reject appellant's contention that Lisa's testimony did not satisfy the criteria of § 36-539(B).

¶10 We will affirm a commitment order if it is supported by substantial evidence, *Maxwell*, 146 Ariz. at 29, 703 P.2d at 576, and will not set aside the trial court's findings unless they are clearly erroneous, *Pima County No. MH-1140-6-93*, 176 Ariz. at 566, 863 P.2d at 285. Based on the testimony of the petitioner's four witnesses, on appellant's testimony and behavior at the hearing, and on the record as a whole, we are satisfied that substantial evidence convincingly supports the trial court's conclusion that appellant is, as the result of a mental disorder, persistently and acutely disabled. We therefore affirm its order entered on January 18, 2008, committing appellant for involuntary mental health treatment.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge